

VZCZCXRO0492
OO RUEHCHI RUEHDT RUEHHM
DE RUEHBK #6119/01 2780947
ZNY CCCCC ZZH
O 050947Z OCT 06
FM AMEMBASSY BANGKOK
TO RUEHC/SECSTATE WASHDC IMMEDIATE 2119
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUEHBY/AMEMBASSY CANBERRA 6119
RUEHUL/AMEMBASSY SEOUL 2174
RHEFDIA/DIA WASHDC
RHHMUNA/HQ USPACOM HONOLULU HI
RHHMUNA/CDR USPACOM HONOLULU HI
RHFJSCC/COMMARFORPAC
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC

C O N F I D E N T I A L SECTION 01 OF 02 BANGKOK 006119

SIPDIS

SIPDIS

E.O. 12958: DECL: 10/03/2016
TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [KJUS](#) [TH](#)
SUBJECT: INTERIM CONSTITUTION PROTECTIONS FOR CIVIL
LIBERTIES

Classified By: CDA Alexander A. Arvizu, reason 1.4 (b) (d)

¶1. (C) SUMMARY: One of the drafters of the interim constitution explained the mechanisms contained in the document for protecting civil liberties. He said language in the interim constitution, although perhaps appearing vague to Westerners, does clearly incorporate by reference the rights guaranteed under previous charters. He also emphasized the value of the newly created Constitutional Tribunal. This is the first time such provisions have been included in an interim constitution. Our contact explained that the restrictions on political activity which remain in effect should be lifted once martial law ends. END SUMMARY.

¶2. (C) Polcouns met October 4 with Borwornsak Uwan, one of the drafters of the interim constitution. Borwornsak provided useful background information on the provisions of the interim constitution, especially concerning protection of human rights.

¶3. (C) Polcouns noted that Thai officials have said the interim constitution contains strong civil liberties protections, and that Article 3 incorporates by reference all the protections in the 1997 Constitution. However, some Thai critics raised concerns about the text, and it also appeared to us to be relatively weak (for text of relevant article, see para 7). Borwornsak explained that the wording of Article 3 guaranteed the rights and liberties of the people, "which have always been enjoyed by the Thai people in accordance with the customary practice of democratic government with the King as the Head of State;" he said that this phrase had specific legal meaning in Thai jurisprudence. According to a court decision from 1994, this language did in fact legally incorporate the rights guaranteed under previous constitutions into the interim charter. Borwornsak also pointed out that the article further states that the rights guaranteed under Thailand's existing international obligations are also protected by the interim constitution. According to Borwornsak, this means that the provisions of international human rights agreements to which Thailand is a party are automatically enforceable in Thai court (without requiring the interim step of being enacted into Thai law, as was the case under previous Thai law.)

¶4. (C) We pointed out that, although guarantees are important, the rights had to be respected and enforced. Borwornsak said that this interim constitution, unlike all previous ones, establishes a Constitutional Tribunal (Article 35) This Tribunal is composed of the Presidents of the

Supreme Court and the Supreme Administrative Court, as well as judges from both courts. This Tribunal is empowered to adjudicate whether any law is in contravention of the provisions of the interim constitution.

15. (C) Finally, we asked how to square the differences between the guarantees for civil liberties he outlined, and the provisions of Article 36, which states that all the orders of the CDR remain in force. These orders included restrictions on civil liberties such as prohibiting five or more people from meeting for a political purpose, and limits on political party activity. Borwornsak said that these restrictions were connected to the continued state of martial law. Once martial law was lifted, he said, there would be no basis for those restrictions. He encouraged the USG to urge the new government to lift martial law as soon as possible. In his opinion, he said, there was no longer any need for martial law, as the danger of a counter-coup by Thaksin supporters was no longer serious.

16. (C) Comment: We are encouraged by the explanation Borwornsak provided on the protections for civil liberties in the interim constitution. Enforcement is obviously the key. In addition, given some of the bad press the interim charter got when it was first released, it would be smart for the new government to reassure the international community -- not to mention Thai citizens -- that human rights are still guaranteed and that there is a court empowered to review the laws passed during this interval to be sure that they conform to the government's commitments. Regarding the danger of a counter-coup, signals emanating from the Council on National Security and the new government suggest some skittishness about lifting martial law too soon. Continuing fear that Thaksin is still plotting something will be a factor driving

BANGKOK 00006119 002 OF 002

the new government's decisions. End comment.

TEXT OF ARTICLE 3

17. (U) "Subject to the provision of this Constitution, the human dignity, rights, liberties and equality, which have always been enjoyed by the Thai people in accordance with the customary practice of democratic government with the King as Head of State as well as Thailand's existing international obligations, shall be protected according to this Constitution."

ARVIZU